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EXAMINER
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ELALLAM, AHMED

ART UNIT	PAPER NUMBER
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2662

DATE MAILED: 09/29/2003

5

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/370,724

Applicant(s)

NADER ET AL.

Examiner

AHMED ELALLAM

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 07 August 1999.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 11-15, 17 are objected to because of the following informalities:

Claims 11-15 are indicated as being apparatus claims, however they depend from method claim 9, claims 11-15 should be method claims instead.

In claim 17, the phrase "the at least one probe network devices" lack antecedent basis.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1, 2, 4, 5, 8-12, 15-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Kenner et al, US (6,003,030).

Regarding claim 1, with reference to figure 1, Kenner discloses:

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- a plurality of delivery site (26, 28, 30) and content providers (22, 24) under test; (each delivery site or content provider reads on a probe network device);

- an Internet Service Provider (ISP) 14, coupled to the delivery site and content providers; (claimed an NVT server coupled to the at least one probe network device);

- a user terminal 12 comprising a configuration utility 34, a client program 36 and a browser 38, the configuration utility queries the user for various item of information, see column 9, lines 36-45. (Corresponding to claimed NVT apparatus allows a user to create at least one task for one task type by entering parameters into a template for each of at least one task);

- the configuration is run on the user terminal, see column 7, lines 56-67 and column 8, lines 1-12, and a preferred site is selected for delivery to the user, see column 7, lines 17-49. (Corresponding to claimed the at least one probe network device is capable of executing a process corresponding to at least one task);

- the configuration file is downloaded from the MSP (mirror service provider) through the ISP (server) to the user terminal 12, see column 8, lines 18-31. (Corresponding to claimed NVT server is capable of transmitting the at least one task to the at least one probe network device hosting the task type; and the at least one probe network device is capable of executing a process corresponding to the at least one task).

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In addition, Kenner discloses monitoring the network under test to determine performance, see column 5, lines 48-67, and column 6, lines 1-27.

Regarding claim 2, Kenner, with reference to figure 1, discloses that the user computer 12 is connected to the ISP 14. (Corresponding to the user is coupled through an Internet connection to the NVT server).

Regarding claims 4, 11, Kenner discloses performing a plurality of network test including transmission capacity, see column 9, lines 44-67 and column 10, lines 1-67, see especially column 10, lines 62-67. (Reads on the claimed one task type includes a traffic generator).

Regarding claims 5, 12, Kenner discloses the Internet for media (claimed serial media) (packets are outputted in serial form to be carried over the Internet), an IP protocol is used, see column 8, lines 66-67, (claimed IP protocol). Since Kenner uses the IP protocol, encapsulation is needed for appending the IP addresses, and that ARPA was the name used for Internet. (Reads on encapsulation is ARPA).

Regarding claims 8, 15, Kenner discloses having a trace-route as part of network tests. See column 9, lines 66-67 and column 10, lines 1-12. (Reads on claimed device type query is a query IP route).

Regarding claim 9, claim 9 is a method claim that has substantially the same scope of rejected apparatus claim 1, thus it is subject to the same rejection.

Regarding claims 10, Kenner, with reference to figure 1, shows a client connected to an ISP. (Corresponding to claimed coupling an NVT client to NVT

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server). In addition, Kenner discloses configuration utility 34 and client program 36 can be downloaded from the MSP (mirror service provider), (corresponding to transmitting a collection of templates corresponding to one task type to NVT client), and the configuration utility queries the user for various item of information, see column 9, lines 36-45. (Corresponding to claimed entering parameters into at least one of the collection of templates to form at least one task), Kenner also discloses sending results to MSP (via ISP), see column 13, lines 19-28. (Corresponding to claimed transmitting the at least one task to the NVT server).

Regarding claim 16, with reference to figure 1, Kenner discloses that clients 12, 16 and 20, communicate with content providers MSP and delivery sites using JAVA/HTML. See column 3, lines 5-38, and column 17, lines 1-9.

Regarding claim 17, with reference to figure 1, Kenner discloses a testing method performed on delivery sites (26, 28, 30), and content providers (22, 24) having a client 12 (claimed network device) coupled to MSP (mirror service provider) (Claimed NVT server), comprising:

- generating a delivery site file comprising a list of tests to be performed, see column 8, lines 18-67 and column 9, lines 1-34; (Corresponding to forming at least one task, the at least one task being formed by entering task parameters into a task template);
- transmitting the site file in accordance with user information to limit entries into the site file so that optimum test can be run for a specified user (client), see column 8, lines 13-39. (Corresponding

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to claimed interpreting the task parameters to form task code that can be transmitted o one of the at least one probe network device that host the task).

Regarding claim 18, claim 18 has substantially the same scope as in claims 4 and 11 rejected above, thus it is subject to the same rejection.

Regarding claim 19, with reference to figure 1, Kenner discloses a network testing apparatus including an ISP (Internet Server Provide) 14 in connection with plurality of probe devices (22, 24, 26, 28, 30) and a client computer 12, comprising:

- delivering a site file to client 12 (received from MSP 32), see column (Corresponding to sending task template to a user); see column 8, lines 18-67 and column 9, lines 1-34;
- the client 12 comprising a configuration utility 34, a client program 36 and a browser 38, the configuration utility queries the user for various item of information, see column 9, lines 36-45, and running test for determining the optimum delivery site/or content provider. (Reads on claimed receiving tasks formed by the user entering parameters into the task templates; translating the tasks to task codes; and transmitting the task code to probe network devices).

Regarding claim 20, has substantially the same scope as in claims 4 and 11 rejected above, thus it is subject to the same rejection.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kenner.

Regarding claim 3, Kenner discloses user terminals coupled to the delivery sites and content providers through ISPs and the Internet 10. Kenner does not disclose that ISP is coupled through an Ethernet control network and a communication server to user terminal.

However, it would have been obvious to an ordinary person of skill in the art at the time of the invention to have the ISP of Kennel coupled through an Ethernet and a communication server to the delivery site and content providers, so that a set user terminals of Kennel may belong to the same LAN (Local Area Network).

4. Claims 6, 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenner in view of Biber et al, US (4,951,278).

Regarding claims 6, 13, Kenner discloses substantially all the limitations of claim 6, except it does not disclose a Logical Link Control (LLC) single protocol



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session emulator or an SDLC (Synchronous Data Link Control) single protocol session emulator.

However, Biber discloses an LLC and SDLC session emulation, see column 7, lines 60-67 and column 8, lines 1-22.

Therefore, it would have been obvious to an ordinary person of skill in the art at the time of the invention to provide Kenner clients with the LLC/or SDLC session emulation taught by Biber so that testing can be implemented on LLC/or SDLC compatible devices.

5. Claims 7, 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenner in view of Haeri et al, US (6,385,615).

Regarding claims 7, 14, Kenner discloses substantially all the limitations of claim 7, except it does not disclose an IPX RIP large network emulator.

However, Haeri, with reference to figure 5A, discloses a client 100 comprising an application that has terminal emulation capabilities implemented in an IPX RIP environment. See column 10, lines 5-14, column 17, lines 47-67 and column 18, lines 1-13.

Therefore, it would have been obvious to an ordinary person of skill in the art at the time of the invention to provide Kenner clients with the IPX RIP emulation application taught by Haeri so that Kenner testing can be applied networks using IPX RIP protocol.

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**Conclusion**

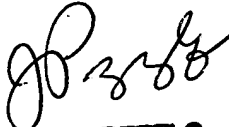
6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Baker et al, US (5,793,954); Liese et al, US (5,854,889); Anderson et al, US (5,850,388); Barnstijn et al, US (5,715,387); Liese et al, US (6,425,096); Cidon et al, US (6,269,330); McLain et al, US (6,295,518).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AHMED ELALLAM whose telephone number is (703) 308-6069. The examiner can normally be reached on 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kizou Hassan can be reached on (703) 305-4744. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4700.

AHMED ELALLAM  
Examiner  
Art Unit 2662  
September 17, 2003

  
JOHN PEZZLO  
PRIMARY EXAMINER